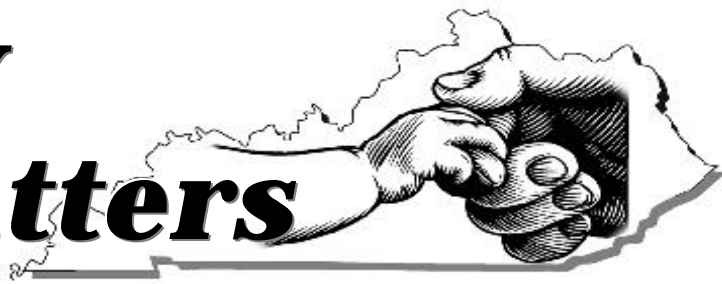


Kentucky Family Matters



Quarterly News & Information About Kentucky's Family Courts

June 2002

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*Visit us on the
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JUNE DECLARED AS FAMILY COURT MONTH

Join us in celebrating June 2002 as Family Court Month in Kentucky. Since 1991, Kentucky Family Court has been providing for the needs of Kentucky families and children in various locations across the Commonwealth. In celebration of the accomplishments of the last ten years and in anticipation of the continuing positive impact upon Kentucky families, June 2002 will be proclaimed Family Court Month in the Commonwealth of Kentucky. Many exciting events have been planned by the Department of Family Court for the upcoming weeks. The 2002 Family Court Conference will kick off the beginning of the month; followed by a Gubernatorial proclamation of June as Family Court Month at the Kentucky Bar Association conference on June 13th; a June 20th Brown Bag lunch on the "Impact of Divorce on Children" will follow at AOC; and the end of the month will wrap up with a reception in the Department of Family Court. You are invited to attend these events and celebrate with our Department. Thousands of Kentucky families are positively impacted by Kentucky's Family Court each year. It is in recognition of this positive impact that we ask you to join the Department of Family Court in celebrating June 2002 as Family Court Month. To all Court of Justice employees who work with Kentucky Family Court, thank you for your tireless efforts, commitment, perseverance, and dedication to your daily tasks that impact upon Kentucky families. Your support is the foundation upon which Kentucky Family Court is built.



Mission Statement

The Department of Family Court provides services and support to the Court of Justice and, further, extends service and support to families who appear in our courts across the Commonwealth. It is our mission to assist the greater court system in providing an accessible, impartial and expeditious system of justice for Kentucky families and children. We are committed to showing respect and sincerity for every person regardless of their status and we continuously strive to improve the quality and effectiveness of our services, while measuring our success through the eyes of the families who are touched by our Court.

Kentucky Family Matters is a forum for the exchange of ideas and information relevant to family courts. The viewpoints expressed in the articles submitted do not necessarily represent the viewpoint of the Administrative Office of the Courts. The Department of Family Courts does not guarantee the accuracy of the information contained in submitted articles and is not responsible for any errors, omissions, or results obtained from use of the information.

BOONE/GALLATIN ... TRUANCY MEDIATION/COURT'S "ON-SITE" MEDIATION

We are pleased to report that the Boone/Gallatin Family Court school truancy mediation program and the Court's on-site mediation program, are performing beyond expectations.

The Court partnered with Walton Verona Independent Schools in Boone County to begin its school truancy program in the fall of 1999. The mediations are handled by Partners in Mediation, a local mediation firm which had contacted the Court prior to the program's development. After hearing about the school truancy program, Partners in Mediation generously agreed to act as mediators on a pro bono basis. The program has shown its value since its inception. In 2000, the school district had 36 truancy cases sent to mediation. During 2001, the number of truancy cases sent to mediation dropped to 26. The district had an average of 35 cases referred to court each year before the mediation program began. Since the program's implementation, 7 cases have gone to court. Larry Davis, Walton Verona Independent Schools Resource Officer, commented, "The program is working well for us. Our attendance rate continues to improve and students and the schools both benefit."

Our Court on-site mediation program is also working well. The flexibility of having immediate mediation between parties who are blocked on only one or a few issues allows the parties to resolve their differences inexpensively and move their case through the docket more quickly. Acting as mediators are Stephen Penrose, Support Worker, and Missy Alsip, Court Administrator. The parties take the opportunity to shape the outcome of their disputes and leave the bargaining table with a positive experience of the court system. "I always tell both parties at the beginning of a mediation session that I'm not there to help one side win, I'm only there to help the two parties work out their problem between themselves. As soon as I say that, I can see both parties become more comfortable with the mediation process and they realize that they each have an equal role in the outcome of the session." Ms. Alsip notes that the parties and attorneys like how mediation on-site lets the parties get their dispute resolved immediately so that they can move on with their lives. "For example, we often have visitation schedule disputes which require only one or two sessions before the parties can reach a schedule they both can live with. Having the ability to resolve a dispute quickly allows the parties to let go of some of the frustration and anger that comes up during the divorce process and move on with their lives."

FRANKLIN... CHILD ABUSE PREVENTION AWARENESS MONTH

Franklin Family Court participated in the recent focus on Child Abuse Awareness month. Blue Bows were made by Family Court and other local participating agencies. The bows were placed throughout Frankfort as a reminder of those children in our community who have been abused, as well as a means of education. On April 18, 2002 there was a Candlelight Vigil at the Capitol Steps. We were blessed with sunny weather, beautiful children and First Lady Judi Patton. A stream of blue could be seen coming down Capitol Avenue and up the Capitol steps. Teddy Bears were brought by the children to be given to children who have been abused and neglected. Blue ribbons and book marks were distributed throughout Franklin county.

Photo by: State Journal/Susan Riddell

JEFFERSON ...

FULL FAITH & CREDIT... IMPROVE DV CASE MANAGEMENT

On behalf of Family Court, Judge Jerry Bowles hosted a Full Faith & Credit Site Visit on February 21st and 22nd. A team of staff and advisors of the National Council of Juvenile and Family Court Judges met with various system players and community members to identify current practice that enable appropriate enforcement of protection orders, as well as observe a variety of procedures and processes. The project is collecting information to find solutions to problems with protection order enforcement throughout the country.

The National Council of Juvenile and Family Court Judges, in cooperation with the Pennsylvania Coalition Against Domestic Violence, and the Violence Against Women's Office, U.S. Department of Justice, is in the process of identifying strategies that courts and communities use that lend themselves to effective enforcement of protection orders. A multi-disciplinary panel of experts identified a variety of best practices and identified communities utilizing many of those practices. Five communities were identified and Louisville was one of them! Information gathered will enable the project to move forward the thinking and vision about the problems and solutions with protection order enforcement throughout the country.



Colonel John Aubrey and his staff were instrumental in educating the participants of the functions of the sheriff's department, as well as providing transportation. Additionally, Appriss, Inc. provided lunch for the group prior to their tour of the VINE, Inc. facility.

PIKE ...

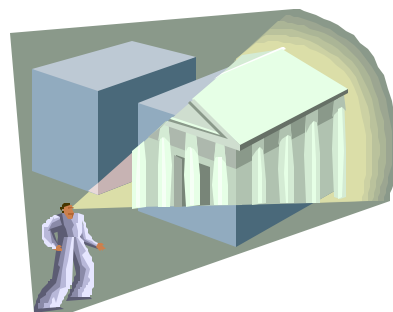
NEW FACILITATORS!

We are happy to announce that the Pike Family Court has moved into new facilities as of January 30, 2002. We are now located in the BB&T Bank Bldg., 4th floor, Pikeville, Ky. We have a children's waiting area with an observation room. If any of you are in Pike county area please feel free to stop by.

Effective January 1, 2002, Kyle Deskins, law clerk, left the Pike Family Court to take a position with Webster Law Offices, Kyle passed the Kentucky Bar in October, 2001, congratulations Kyle! We would also like to take this time to welcome our new law clerk, Darlene Turnmire, she will begin working with us in June, 2002.

Pike Family Court has been busy with a variety of things to help the Court be more efficient. We have implemented the Status Quo Order and our support worker has put together a Resource Manual. We have also implemented a program from the Big Sandy Family Abuse Center for the Domestic Violence cases. The victims are ordered to go to counseling that is provided by this program.

There are three new facilitators in The Families In Transition Program now, for a total of six. We have also amended the age group for the children that attend the FIT program to ages five (5) to sixteen (16).



“BEEN THERE - DONE THAT”

***Submitted by Hon. Larry Thompson
Pike Family Court***

By now you are all aware that our annual Family Court Conference is scheduled for June 5th, 6th and 7th in Louisville, Kentucky. My staff and I are looking forward to seeing everyone within the Family Court System, the old and new. In connection with the conference I have been asked to welcome and introduce our new Family Court sites. It is my understanding that in the very near future we will be adding the following counties: (1) Clay, Jackson and Leslie; (2) Carter, Elliott and Morgan; (3) Henderson, and (4) Union, Webster and Crittenden.

In preparing for the Conference I found myself thinking of my first days as a Family Law Judge. First, I remember how pleased I was to have been elected to the position. The second thing I remember is thinking what have I gotten myself into. Prior to taking the Family Court bench in January, 2000, I had served for approximately four (4) years as a District Court Judge. Although I had experience as a Judge, and had even handled some of the same cases a Family Law Judge deals with, it did not take long to realize this was a totally new world.

Hon. Larry Thompson

It is often stated that a fundamental feature of Family Court is “One Family, One Judge, One Court.” After my first day in Family Court I realized the impact of the term “One Judge”. As a District Judge I worked in a system that had been in effect for over twenty (20) years. In Family Court I stepped into a position that was in its infancy and instead of tuning an existing system I was trying to develop and implement a new one.

As a District Judge, in a multi-judge system, I was blessed to work with other Judges which gave me the ability to bounce questions and ideas off them. In Family Court I initially felt isolated because there were no other Family Law Judges in Pike County. However, after two and one-half (2½) years on the job I now realize that the isolation was self-imposed. There were people there to talk to, I just did not realize it. So in an attempt to offer unsolicited advice to our new sites please consider the following options when you feel the isolation set in or you just need to bounce an idea off someone:

- Judges (local) - Although the Family Court system may be new to your county the cases are not. Talk to the Judges who handled the cases before. They may have valuable recommendations for the implementation of your new system: docket management, etc.
- Judges (statewide) - Remember, you have other Family Law Judges out there who have experienced the same growing pains you are encountering. Pick-up the phone or e-mail them. Some of the best suggestions that I have received came from other Family Law Judges. This can be a valuable tool for your staff also. Have your staff contact their counterparts in the other Family Court sites.
- Staff - never underestimate the value of your staff. Listen to your staff; they will become your inner circle.
- AOC - The staff at AOC is always there for you. In the past seven (7) years I’ve called on them repeatedly and they have always answered my questions, they can help.

The public thinks a good Judge knows all the right answers. After seven (7) years on the bench I can say that a good Judge is one that can find the right answers and what better way to do this then talk to someone who has “been there - done that”.

Reviewing the Presumption... Marital v. Nonmarital Property

Robin G. Fisher
Family Court Specialist

Presumptions give certain effect to facts or information. In the legal arena, a person who wishes to show a contradiction of presumed information bears the burden of rebutting the presumed fact. Thus, rebuttable presumptions set forth information that is taken as true or accurate, until contrary information or evidence is presented. A recent decision by the Supreme Court of Kentucky reviewed the statutory presumption that all property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital property. KRS 403.190(3).

Released for publication December 12, 2001, *Travis v. Travis* caused the courts to reexamine distribution of property issues, specifically the designation of property as marital or nonmarital and the KRS 403.190(3) presumption. 59 S.W. 3d 904 (Ky. 2001). In that case, Mr. and Mrs. Travis jointly obtained a loan to purchase a house and make improvements. The house was used as the marital residence of the parties for seven years. In addition to the loan proceeds, Mr. Travis contributed \$7,500 nonmarital money to fund the purchase and improvements. There is no record of Mrs. Travis making monetary contributions; however, she made improvements to the interior of the house by painting, wallpapering, and staining.

After the parties separated but prior to dissolution of their marriage, the house was destroyed by fire. Division of insurance proceeds proved problematic, with both parties employing a different methodology for distribution. Mrs. Travis argued that Mr. Travis should receive only \$7,500 as nonmarital property, and that the remaining insurance proceeds constitute marital property and should be equitably divided between the parties. Mr. Travis argued that in addition to the \$7,500 he contributed from nonmarital funds, the remaining insurance proceeds should be divided into marital and nonmarital property, based proportionately upon the parties original contributions. Ultimately, the case turned on whether Mr. Travis was required to show that his nonmarital contribution of \$7,500 increased in value as a result of general economic conditions. If the value of nonmarital property increases, even subsequent to the marriage, as a result of general economic conditions the increase is deemed to be nonmarital. However, if the value increases as a result of the joint efforts of the parties, it is divisible marital property. *Goderwis v. Goderwis*, 780 S.W.2d 39 (Ky. 1989). Thus, the marital property presumption was directly related to the value of the property and the general economic conditions at the time.

The trial court applied the *Brandenburg* formula, and divided the disputed proceeds based upon marital and nonmarital portions. *Brandenburg v. Brandenburg*, 617 S.W.2d 871 (Ky. App. 1981). The appellate court reversed the decision of the trial court, remanding the case with instructions that the trial court divide the total insurance proceeds, less the original \$7,500, as marital property.

Upon review by the Supreme Court of Kentucky, the Court concluded that Mr. Travis did not introduce evidence sufficient to overcome the KRS 403.190(3) presumption that all property acquired by either spouse after the marriage and before a decree of legal separation was marital property. Therefore, because Mr. Travis failed to rebut the presumption, the insurance proceeds in excess of his nonmarital contribution of \$7,500 are classified as marital property.

The Supreme Court's affirmation of the decision of the Court of Appeals reiterates the effect of rebuttable presumptions. As *Travis* takes its place as precedent, it would not be surprising to see statutory presumptions clearly and specifically rebutted in the future. Certainly, general economic conditions will be addressed by litigants in future cases when an issue of marital v. nonmarital property division is at hand.



Frequently Asked Questions

The Frequently Asked Questions in this edition will focus on children and child-related issues. The answers that follow are meant to provide resources to those persons seeking additional information regarding the topics addressed. Court of Justice employees are statutorily prohibited from providing legal advice. Please consult an attorney for details specific to your particular circumstances.

Should/can I take my children to court?

Some proceedings require attendance by the child(ren) involved in the case. However, more often, the children are not required to attend. Your attorney or the Family Court Support Worker can advise you if the attendance of your child is required. If you find it necessary to bring your child with you to court, you may want to contact the Family Court Support Worker in your area to check availability of the children's waiting room. The purpose of a children's waiting area is to provide children with a safe, low-stress, fun environment in which to wait while their parents or caregivers are in court. It is a goal of Kentucky's Family Courts to have children's waiting rooms available at all of Kentucky's Family Court sites. Children's waiting rooms are staffed by local community volunteers. Availability of the rooms are based on the number of volunteers, number and ages of children, and court and volunteer schedules. Prior to your court date, be sure and check on the availability of the children's waiting room.

How is child support calculated in Kentucky?

The calculation of child support is directed by Kentucky Revised Statute 403.210, and following statutes, including KRS 403.212 which provides standard guidelines and a child support table. However, many complicated legal issues impact the final child support order. Judges have authority to deviate from the statutory guidelines under certain circumstances.

Generally, the monthly gross income of both parents are combined and then certain deductions are made in accordance with pre-existing court orders. Then the parent's individual proportion is divided based on their individual proportion of the combined monthly adjusted parental gross income. Gross income calculations include income from a variety of sources. Your attorney can discuss the applicable statutes with you and provide a list of items to be included in gross income. Child support will then be set for the number of children whom the parents share a joint legal responsibility. The minimum amount of child support shall be sixty (\$60) dollars per month.

Elements that can impact calculation include, *but are not limited to*, parents' employment, employment status, pre-existing support orders, and custody arrangements. Calculations are based on several legal factors, you should contact an attorney to obtain specific legal advice regarding your particular set of circumstances.

You may also contact the Child Support Division of your local County Attorney's office or the Kentucky's Child Support Hotline at (800) 248-1163 for assistance with Child Support matters. The Cabinet for Families and Children also offers an informative website which features frequently asked questions about child support, you can access this information at <http://www.cfc.state.ky.us>

How can I get my name or my child's name legally changed?

The Kentucky Revised Statutes Chapter 401 Change of Name outlines the procedure for name changes. The statutes can be accessed on-line on the Kentucky Legislative Research Commission Website (www.lrc.state.ky.us/home.htm) or at your local county law library. Contact your local Circuit Court Clerk's office for information on the current fees and costs for name changes.

FAMILY COURT BROWN BAG - IMPACT OF DIVORCE ON CHILDREN

The Department of Family Court is planning a one-hour brown bag lunch at AOC on June 20th from noon until 1:00. Dr. Joe H. Brown will be the speaker. Dr. Brown is a Professor at the University of Louisville in the Family Therapy Department of the Kent School of Social Work. He developed the Families in Transition program in 1992 and has served as the Director of the program since that time.

Dr. Brown has published numerous articles, books, and papers on divorce adjustment and family therapy. His most recent articles detail the development and implementation of divorce education programs and provide a structural model for such programs.

Because of Dr. Brown's hard work and dedication to divorce education programs, he has been instrumental in receiving approximately one million dollars in grants to fund court-mandated divorce education programs and visitation centers.

SUPPORT 2002

The Department of Family Court has made available copies of Craig Ross's *Support 2002* to Court of Justice judges and legal staff interested in experimenting with the software. *Support 2002* is stand alone software for all Windows systems that calculates child support under the State Guidelines, (b) prints the standard Kentucky child support worksheet, (c) makes maintenance suggestions, both as to amount and duration, (d) contains an "unallocated" (Family Support) algorithm to allow practitioners to attempt some shifting of the cost of the divorce via Section 71 of the Internal Revenue Code, (e) allows the user to calculate a "buyout" of the present value of maintenance and (f) includes a program for calculating the present values of defined benefit pension plans. The software also contains a monograph on pension distribution matters and a thumbnail Asset Index, focusing on possible issues in Kentucky's law of property distribution. *Support 2002*, according to the authors, contains a fairly comprehensive tax program for calculating the implications of any transfer.



Support 2002 is a similar program to one developed by Craig Ross in Michigan, a program endorsed by the Family Law Section of the Michigan Bar. The authors worked with private attorneys in Louisville in creating the Kentucky version. *Support 2002* is available to private practitioners through the authors. It is not expensive software and the authors allow a 60-day trial period at no risk. Those interested should contact Craig Ross at cross@comcast.net or (734) 633-0998. Questions about the software and the theory behind the maintenance algorithms are welcomed.

UPCOMING EVENTS

Family Court Conference	June 5-7, 2002
Family Court Proclamation Signing	June 14, 2002
KBA	June 12-14, 2002
Regional Meeting/Cadiz	June 19-20, 2002
Regional Meeting/Owensboro	June 21

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